

**UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD**

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**In the Matter of**

**LIFEWAY FOODS, INC.,**

**Employer,**

**and**

**Case 13-RC-113284  
Stipulated**

**BAKERY, CONFECTIONARY,  
TOBACCO WORKERS, AND  
GRAIN MILLERS INTERNATIONAL UNION,  
LOCAL UNION NO. 1,**

**Petitioner**

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**LIFEWAY FOODS, INC.'S EXCEPTIONS TO THE HEARING OFFICER'S REPORT  
AND RECOMMENDATIONS ON CHALLENGED BALLOTS AND OBJECTIONS TO  
CONDUCT AFFECTING THE RESULTS OF THE ELECTION**

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Dated: December 5, 2014

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<b>Lifeway Foods, Inc.</b>	)	
	)	
<b>and</b>	)	<b>Case 13-RC-113248</b>
	)	<b>Stipulated</b>
<b>Bakery, Confectionary, Tobacco Workers, )</b>		
<b>and Grain Millers International Union, )</b>		
<b>Local Union No. 1 )</b>		

Pursuant to Sections 102.69(j)(1), 102.46 and 102.114 of the National Labor Relations Board’s Rules and Regulations, Employer Lifeway Foods, Inc. (“Lifeway” or the “Company”), submits the following exceptions to the Report and Recommendations on Challenged Ballots and Objections to Conduct Affecting the Results of the Election<sup>1</sup> by Hearing Officer Scott Preston (“Hearing Officer”), dated October 31, 2014.

1. The Hearing Officer erred as a matter of law by repeatedly coaching and requesting what testimony and arguments he wanted Petitioner and its witnesses to offer, and by personally advancing arguments on behalf of Petitioner in both on the record and off the record discussions. (Tr. 80, 141, 488, 628-29, 690, 694-95, 771, 626, 632, 769, 772, 773, 809, 907-09).
2. The Hearing Officer erred as a matter of fact and law by engaging in off the record coaching and requesting that Petitioner present testimony that Board agents were wearing

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their badges during the election so that Petitioner could prompt its witnesses to present such testimony.

3. The Hearing Officer erred as a matter of law by overruling Lifeway's objections and allowing Petitioner's counsel to lead, coach, and prompt a witness to give additional testimony after the witness had testified multiple times that nothing else had happened. (Tr. 601).
4. The Hearing Officer erred as a matter of law by permitting a translator who was not capable of translating live testimony act as translator at the hearing, over Lifeway's objections, Petitioner's objections, the complaints and objections of the parties' representatives, and even the complaints of the Hearing Officer himself. (Tr. 500, 518, 520-21, 530, 618, 621-22, 623, 635, 636, 638, 639, 640, 641, 642, 644, 645, 646, 730, 732, 733-35, 736, 749, 750, 828).
5. The Hearing Officer erred as a matter of law by permitting a translator who was not capable of translating live testimony to translate testimony inaccurately, over Lifeway's objections, Petitioner's objections, the complaints and objections of the parties' representatives, and even the complaints of the Hearing Officer himself. (Tr. 500, 518, 520-21, 530, 618, 621-22, 623, 635, 636, 638, 639, 640, 641, 642, 644, 645, 646, 730, 732, 733-35, 736, 749, 750, 828).
6. The Hearing Officer erred as a matter of law by requiring the parties to conduct lengthy, substantive discussions about the case and Lifeway's Objections off the record, and by refusing (while off the record) on at least one occasion to place these substantive discussions on the record. (Tr. 80, 141, 488, 628-29, 690, 694-95, 771 (off-record

discussions); Tr. 813 (specific on-record request not to have further off-record discussions)).

7. The Hearing Officer erred as a matter of law by arbitrarily restricting the parties' post-hearing briefs with: a seven day time limit over a holiday weekend with no extensions while transcription was pending; a short ten-page limit; "bare-bones" recitations of law; and no discussions of the facts; all despite eleven separate objections by Lifeway and over 900 transcript pages, precluding Lifeway from adequately briefing the issues. (Tr. 918-19).
8. The Hearing Officer erred as a matter of fact and law by asking witnesses misleading questions during the hearing, by repeatedly misunderstanding and confusing key testimony from both parties, and by mischaracterizing witness testimony during questioning, despite Lifeway's objections. (Tr. 461-62, 520-21, 601, 748, 750, 751).
9. The Hearing Officer erred as a matter of law by coaching Petitioner on evidence it should introduce or clarify and by cautioning Petitioner's counsel against entering documents that weighed against Petitioner's position. (Tr. 736, 769, 772, 773, 809).
10. The Hearing Officer erred as a matter of fact and law when he found that Petitioner could ignore the appropriate unit found in the Regional Director's 2009 Decision and Direction of Election and challenge voters Petitioner had specifically stipulated to be eligible voters in this case, and that such challenges did not have the purpose of chilling these employees' exercise of their Section 7 rights. (HOR 8-13).
11. The Hearing Officer erred as a matter of fact and law when he found that Petitioner was aware of the Regional Director's 2009 Decision and Direction of Election, "agreed to . . . the same bargaining unit which had been found appropriate in the prior Decision and Direction of Election" and yet engaged in no objectionable conduct when it challenged

eligible voters in that bargaining unit, and that such challenges did not have the purpose of chilling these employees' exercise of their Section 7 rights. (HOR 8-13) (Tr. 38-39, 44-46, 51-53, 63-64, 67-70, 168, 170-73, 175-77, 272, 324-30, 405-17, 534-51, 557, 568-69, 599, 615-18, 620-22, 630-31, 634, 644-47, 666-67, 683, 687-88, 738, 793-95, 809-10, 821, 824, 833-34, 869) (Er. Exs. 1-3, 6, 8-11, 17-21) (Pet'r Ex. 8).

12. The Hearing Officer erred as a matter of fact and law when he found that Petitioner's unfounded contention that drivers and shipping logistics employees were not shipping and receiving employees, despite agreeing to the unit from the Regional Director's 2009 Decision and Direction of Election that had included all drivers and shipping logistics employees as shipping and receiving employees, did not have the purpose of chilling these employees' exercise of their Section 7 rights. (HOR 10-13) (Tr. 38-39, 44-46, 51-53, 63-64, 67-70, 168, 170-73, 175-77, 272, 324-30, 405-17, 534-51, 557, 568-69, 599, 615-18, 620-22, 630-31, 634, 644-47, 666-67, 683, 687-88, 738, 793-95, 809-10, 821, 824, 833-34, 869) (Er. Exs. 1-3, 6, 8-11, 17-21) (Pet'r Ex. 8).
13. The Hearing Officer erred as a matter of fact and law when he found that Petitioner's challenge to all of the drivers, all of whom were specifically stipulated to be eligible voters, did not have the purpose of chilling these employees' exercise of their Section 7 rights. (HOR 10-13) (Tr. 824, 834).
14. The Hearing Officer erred as a matter of law when he permitted Petitioner's Recording Secretary and Business Agent to testify a second time on a subsequent day during the hearing and to directly contradict sworn testimony she had previously provided during the hearing, over multiple objections by Lifeway. (HOR 9-13) (Tr. 615-69, 670-89, 825-94).

15. The Hearing Officer erred as a matter of fact when he stated that Petitioner “confirmed . . . that all the women were managers or office clerical” when Petitioner testified to the contrary and all documentary evidence established the opposite proposition. (HOR 10) (Tr. 38-39, 44-46, 51-53, 63-64, 67-70, 168, 170-73, 175-77, 272, 324-30, 405-17, 534-51, 557, 568-69, 599, 615-18, 620-22, 630-31, 634, 644-47, 666-67, 683, 687-88, 738, 793-95, 809-10, 821, 824, 833-34, 869) (Er. Exs. 1-3, 6, 8-11, 17-21) (Pet’r Ex. 8).
16. The Hearing Officer erred as a matter of fact and law when he found that there was “no evidence” that voters were chilled in their exercise of their Section 7 rights when the total number of voters was substantially lower than the number of eligible voters according to the Revised Tally of Ballots. (HOR 2, 6, 11; Supplement to HOR with Revised Tally of Ballots).
17. The Hearing Officer erred as a matter of fact and law when he found that there was “no evidence” that voters were chilled in their exercise of their Section 7 rights when voters testified they felt Petitioner’s and Board Agents’ actions chilled the exercise of their Section 7 rights. (HOR 2, 6, 11) (Tr. 164, 166-68, 280-81, 353-54, 442, 448, 451, 512-13, 566-67).
18. The Hearing Officer erred as a matter of fact and law when he found that Petitioner’s multiple directives to observers to challenge all the women was not evidence that Petitioner challenged similarly situated voters selectively based on their gender, rather than for any valid reason, for the purpose of chilling these employees’ exercise of their Section 7 rights. (HOR 10-13) (Tr. 38-39, 44-46, 51-53, 63-64, 67-70, 168, 170-73, 175-77, 272, 324-30, 405-17, 534-51, 557, 568-69, 599, 615-18, 620-22, 630-31, 634, 644-47, 666-67, 683, 687-88, 738, 793-95, 809-10, 821, 824, 833-34, 869) (Er. Exs. 1-3, 6, 8-11, 17-21) (Pet’r Ex. 8).

19. The Hearing Officer erred as a matter of fact and law when he equated voters' ethnic origin and perceived ethnicity of their names with their race. (HOR 10).
20. The Hearing Officer erred as a matter of law when he required Lifeway to show that Petitioner acted "with malicious intent" in challenging voters for discriminatory reasons or no reasons at all. (HOR 12).
21. The Hearing Officer erred as a matter of law when he required Lifeway to show actual evidence that Petitioner's discriminatory challenges of voters interfered with employees' freedom of choice. (HOR 12).
22. The Hearing Officer erred as a matter of law when he implicitly found that the fact that the total number of voters was substantially lower than the number of eligible voters according to the Revised Tally of Ballots was not actual evidence that Petitioner's discriminatory challenges of voters interfered with employees' freedom of choice. (HOR 12).
23. The Hearing Officer erred as a matter of fact and law when he found that the Petitioner "did not engage in objectionable conduct" when it "challenged the ballots of [certain] employees based in large part on their work location," rather than for any valid reason. (HOR 12) (Tr. 38-39, 44-46, 51-53, 63-64, 67-70, 168, 170-73, 175-77, 272, 324-30, 405-17, 534-51, 557, 568-69, 599, 615-18, 620-22, 630-31, 634, 644-47, 666-67, 683, 687-88, 738, 793-95, 809-10, 821, 824, 833-34, 869) (Er. Exs. 1-3, 6, 8-11, 17-21) (Pet'r Ex. 8).
24. The Hearing Officer erred as a matter of fact and law when he found that the Petitioner "did not engage in objectionable conduct" when it challenged ballots of certain employees because they "work[ed] in what the Petitioner believes to be an office," rather than for any valid reason. (HOR 12) (Tr. 38-39, 44-46, 51-53, 63-64, 67-70, 168, 170-73, 175-77, 272, 324-30, 405-17, 534-51, 557, 568-69, 599, 615-18, 620-22, 630-31, 634, 644-47, 666-67,

683, 687-88, 738, 793-95, 809-10, 821, 824, 833-34, 869) (Er. Exs. 1-3, 6, 8-11, 17-21) (Pet'r Ex. 8).

25. The Hearing Officer erred as a matter of fact and law when he equated Petitioner's challenges to employees who physically "work[ed] in what the Petitioner believes to be an office" with challenges to employees whose job duties were as office clerical workers (HOR 12) (Tr. 38-39, 44-46, 51-53, 63-64, 67-70, 168, 170-73, 175-77, 272, 324-30, 405-17, 534-51, 557, 568-69, 599, 615-18, 620-22, 630-31, 634, 644-47, 666-67, 683, 687-88, 738, 793-95, 809-10, 821, 824, 833-34, 869) (Er. Exs. 1-3, 6, 8-11, 17-21) (Pet'r Ex. 8).
26. The Hearing Officer erred as a matter of fact and law when he made the contradictory findings on one hand "that the Petitioner challenged the ballots of [certain] employees based in large part on their work location" and because they "work[ed] in what the Petitioner believes to be an office," and on another (contrary to all evidence) that the Petitioner "challeng[ed] these employees due to its belief that they were office clerical workers." (HOR 12) (Tr. 38-39, 44-46, 51-53, 63-64, 67-70, 168, 170-73, 175-77, 272, 324-30, 405-17, 534-51, 557, 568-69, 599, 615-18, 620-22, 630-31, 634, 644-47, 666-67, 683, 687-88, 738, 793-95, 809-10, 821, 824, 833-34, 869) (Er. Exs. 1-3, 6, 8-11, 17-21) (Pet'r Ex. 8).
27. The Hearing Officer erred as a matter of law when he required Lifeway to show that Petitioner acted with "animus" in challenging voters based on the perceived ethnicity of their names. (HOR 12).
28. The Hearing Officer erred as a matter of fact when he stated that there was "no evidence" to support that Petitioner challenged voters based on the perceived ethnicity of their names,



when Petitioner's text messages entered as exhibits indicated that Petitioner wanted to challenge all of the "Russians." (HOR 12) (Tr. 631, 824, 834) (Er. Exs. 1, 2, 20).

29. The Hearing Officer erred as a matter of fact and law when he stated that there was "no evidence" of Petitioner's intent to challenge job classifications to chill these employees' exercise of their Section 7 rights or that such an effect actually occurred. (HOR 13) (Tr. 31-32, 38-39, 44-46, 51-53, 63-64, 67-70, 168, 170-73, 175-77, 272, 324-30, 405-17, 534-51, 557, 568-69, 599, 615-18, 620-22, 630-31, 634, 644-47, 666-67, 683, 687-88, 738, 793-95, 809-10, 821, 824, 833-34, 869) (Er. Exs. 1-3, 6, 8-11, 17-21) (Pet'r Ex. 8).
30. The Hearing Officer erred as a matter of law when he required Lifeway to show evidence that employees' Section 7 rights were actually chilled. (HOR 13).
31. The Hearing Officer erred as a matter of fact and law when he equated Petitioner's "red lists" of handwritten names with "a copy of the *Excelsior* list" under existing Board precedent. (HOR 14) (Tr. 666-67).
32. The Hearing Officer erred as a matter of law when he found that Petitioner's "red lists" of handwritten names that Petitioner's observer kept "in plain sight," made markings and wrote names on that were observed by multiple voters, and returned to Petitioner with notations as to who voted, "was not objectionable conduct" under existing Board precedent. (HOR 14-15) (Tr. 96-97, 340, 342-44, 346-47, 385, 402, 429-32, 435-36, 438-40, 450-51, 497-99, 555-56, 562-67, 603-04, 738, 740) (Er. Exs. 17-18).
33. The Hearing Officer erred as a matter of law when he excused Petitioner's use and maintenance of the "red lists" because Petitioner later received a list of challenged voters from the Region. (HOR 14-16).

34. The Hearing Officer erred as a matter of fact and law when he found that Petitioner's observer's statement at the Morton Grove polling location addressed to "the majority of the people in [a] group," rather than to individual voters, was not objectionable conduct under existing Board precedent. (HOR 16) (Tr. 75, 154-55, 157-58, 163-64, 280-81, 419, 492-94, 495-99, 500-02, 509-10, 512-13, 519, 521-23, 612-13, 725-26, 729, 738, 846-47) (Er. Exs. 8, 10) (Jt. Ex. 4).
35. The Hearing Officer erred as a matter of fact and law when he found that the Board agent's decision to escort a group of voters out of the Morton Grove polling area instead of allowing them to vote (whether subject to challenge or otherwise) was not objectionable conduct. (HOR 16) (Tr. 75, 154-55, 157-58, 163-64, 280-81, 419, 492-94, 495-99, 500-02, 509-10, 512-13, 519, 521-23, 612-13, 725-26, 729, 738, 846-47) (Er. Exs. 8, 10) (Jt. Ex. 4).
36. The Hearing Officer erred as a matter of fact and law when he found that the Board agent's decision to escort a group of voters out of the Morton Grove polling area instead of allowing them to vote (whether subject to challenge or otherwise) was not objectionable conduct because the Board agent may have removed some, but not all, voters who were then present from the polling area. (HOR 17) (Tr. 75, 154-55, 157-58, 163-64, 280-81, 419, 492-94, 495-99, 500-02, 509-10, 512-13, 519, 521-23, 612-13, 725-26, 729, 738, 846-47) (Er. Exs. 8, 10) (Jt. Ex. 4).
37. The Hearing Officer erred as a matter of fact when he found that Petitioner's observer at the Morton Grove polling location "made his challenges one by one." (HOR 16-17) (Tr. 75, 154-55, 157-58, 163-64, 280-81, 419, 492-94, 495-99, 500-02, 509-10, 512-13, 519, 521-23, 612-13, 725-26, 729, 738, 846-47) (Er. Exs. 8, 10) (Jt. Ex. 4).

38. The Hearing Officer erred as a matter of fact when he found that voter Sara Hernandez was in the same group as the group of voters who were escorted out of the polling area at the Morton Grove polling location by the Board agent. (HOR 15-17) (Tr. 166-68, 332-34, 382, 418-19, 430-31, 455, 501, 510).
39. The Hearing Officer erred as a matter of fact when he found that voters Edith Barraza and Zyril Deborja (a man) were in the same group as the group of all female voters who were escorted out of the polling area at the Morton Grove polling location by the Board agent. (HOR 15-17) (Tr. 166-68, 332-34, 382, 418-19, 430-31, 455, 501, 510).
40. The Hearing Officer erred as a matter of fact when he failed to find that some of the group of female voters who were escorted out of the polling area at the Morton Grove polling location initially tried to vote at approximately 9:30 a.m. and then returned with a different group of male and female voters at approximately 11:00 a.m. (Tr. 166-68, 332-34, 382, 418-19, 430-31, 455, 501, 510).
41. The Hearing Officer erred as a matter of fact when he stated that Lifeway employee George de la Fuente was only told that three people in the group removed by the Board agent at the Morton Grove polling location “were told that they not (sic) allowed to vote.” (HOR 18) (Tr. 166-68, 332-34, 382, 418-19, 430-31, 455, 501, 510).
42. The Hearing Officer erred as a matter of fact when he stated that the Petitioner’s observer, rather than the Board agent, told voters at the Morton Grove polling location that they were ineligible to vote. (HOR 18) (Tr. 75, 154-55, 157-58, 163-64, 280-81, 419, 492-94, 495-99, 500-02, 509-10, 512-13, 519, 521-23, 612-13, 725-26, 729, 738, 846-47) (Er. Exs. 8, 10) (Jt. Ex. 4).

43. The Hearing Officer erred as a matter of fact and law when he stated that the Petitioner's observer telling the Board agent at the Morton Grove polling location that he "most of the people" in a group of all female voters were listed on his improper "red list," leading the Board agent to remove the group of female voters from the polling area, was not "as egregious" as other violations that could have occurred. (HOR 18) (Tr. 75, 154-55, 157-58, 163-64, 280-81, 419, 492-94, 495-99, 500-02, 509-10, 512-13, 519, 521-23, 612-13, 725-26, 729, 738, 846-47) (Er. Exs. 8, 10) (Jt. Ex. 4).
44. The Hearing Officer erred as a matter of law when he applied an "as egregious" standard that does not exist under existing Board precedent to Board agent misconduct at the Morton Grove polling location. (HOR 18).
45. The Hearing Officer erred as a matter of fact and law when he equated a Board agent at the Morton Grove polling location telling voters that they were ineligible to vote and removing them from the polling area in the presence of other voters to case law involving a situation where a Board agent advised a group of voters that they would all be challenged. (HOR 18) (Tr. 75, 154-55, 157-58, 163-64, 280-81, 419, 492-94, 495-99, 500-02, 509-10, 512-13, 519, 521-23, 612-13, 725-26, 729, 738, 846-47) (Er. Exs. 8, 10) (Jt. Ex. 4).
46. The Hearing Officer erred as a matter of fact and law when he found that a Board agent at the Niles voting location did not assist Petitioner's observer in making challenges and providing the observer with reasons for those challenges. (HOR 19) (Tr. 74-78, 87-89, 96-97, 554-56, 823,24, 847-48) (Er. Exs. 1, 2, 12-13, 17-18).
47. The Hearing Officer erred as a matter of fact and law when he found "no basis for an assertion" that the Board agent at the Niles polling location had assisted Petitioner's

observer in challenging voters. (HOR 19-20) (Tr. 74-78, 87-89, 96-97, 554-56, 823,24, 847-48) (Er. Exs. 1, 2, 12-13, 17-18).

48. The Hearing Officer erred as a matter of fact and law when he “infer[red]” that the Board agent at the Niles polling location did not assist the observer in challenging voters, despite, among other evidence, the Board agent’s preparation of her own list of challenged voters and specific reasons that she had provided for those challenges and presentation of that list to Lifeway, a list that was entered into evidence and that the Hearing Officer analyzed elsewhere in his decision. (HOR 19-20) (Tr. 74-78, 87-89, 96-97, 554-56, 823,24, 847-48) (Er. Exs. 1, 2, 12-13, 17-18).
49. The Hearing Officer erred as a matter of fact and law when he assumed what the Board agent at the Niles polling location “was referring to” in contradiction to the documentary evidence of what that Board agent actually wrote in her own list and in contradiction to uncontroverted testimony presented by Lifeway’s observer Joseph Ackerman, even though the Hearing Officer specifically credited both the documentary evidence and Mr. Ackerson’s testimony elsewhere in his decision. (HOR 19-21) (Tr. 74-78, 87-89, 96-97, 554-56, 823,24, 847-48) (Er. Exs. 1, 2, 12-13, 17-18).
50. The Hearing Officer erred as a matter of fact and law when he stated that the Board agent at the Niles location only “remind[ed] an observer to make verbal challenges” when uncontroverted documents and testimony established otherwise. (HOR 20-21) (Tr. 74-78, 87-89, 96-97, 554-56, 823,24, 847-48) (Er. Exs. 1, 2, 12-13, 17-18).
51. The Hearing Officer erred as a matter of fact and law when he found that the parties’ stipulation that Brianne Sadowski’s vote was challenged by Petitioner at the Niles polling location and the Region’s admission in the Report on Challenges and Objections and

Notice of Hearing that it could not locate Ms. Sadowski's challenge envelope were insufficient to establish that Ms. Sadowski's ballot was lost. (HOR 21-23) (Tr. 83-84, 86, 97-98, 101-03, 557-58, 599-600, 865) (Er. Exs. 10, 12-14) (Jt. Ex. 1).

52. The Hearing Officer erred as a matter of fact and law when he requested that the Company "provide evidence, like testimony from the observer" that Ms. Sadowski had voted and then disregarded the testimony from the observer, who he otherwise credited, that Ms. Sadowski had voted. (HOR 6 n.3, 21-23) (Tr. 83-84, 86, 97-98, 101-03, 557-58, 599-600, 865) (Er. Exs. 10, 12-14) (Jt. Ex. 1).
53. The Hearing Officer erred as a matter of fact and law when he requested that the Company "provide evidence, like testimony from the observer" that Ms. Sadowski had voted and then, when the Company provided that observer's testimony, disregarded that testimony and demanded instead that the Company produce Ms. Sadowski. (HOR 6 n.3, 21-23) (Tr. 83-84, 86, 97-98, 101-03, 557-58, 599-600, 709, 865) (Er. Exs. 10, 12-14) (Jt. Ex. 1).
54. The Hearing Officer erred as a matter of fact and law when he found that the parties' stipulation that Brianne Sadowski's vote was challenged by Petitioner at the Niles polling location and his finding that the Region does not have and has never found an envelope containing a challenged ballot for Ms. Sadowski were insufficient to establish that Ms. Sadowski's ballot was lost. (HOR 6 n.3, 21-23) (Tr. 83-84, 86, 97-98, 101-03, 557-58, 599-600, 865) (Er. Exs. 10, 12-14) (Jt. Ex. 1).
55. The Hearing Officer erred as a matter of law when he failed to find that Board Agents who "dropped the [ballot] boxes off and left" after transporting them from Niles to Morton Grove violated Board procedure and engaged in objectionable conduct. (Tr. 865).

56. The Hearing Officer erred as a matter of fact and law when he found the Region's admission in the Report on Challenges and Objections and Notice of Hearing about Ms. Sadowski's ballot "to be pure speculation." (HOR 23) (Tr. 83-84, 86, 97-98, 101-03, 557-58, 599-600, 865) (Er. Exs. 10, 12-14) (Jt. Ex. 1).
57. The Hearing Officer erred as a matter of fact and law when he confused Alla Rubina, the voter who his decision and the evidence showed "actually deposited a ballot in the ballot box before the fact that [she] was being challenged" was known, with Ms. Sadowski. (HOR 24) (Tr. 83-84, 86, 97-98, 101-03, 557-58, 599-600, 865) (Er. Exs. 10, 12-14) (Jt. Ex. 1).
58. The Hearing Officer erred as a matter of fact and law when he disregarded the parties' stipulation that Petitioner challenged Ms. Sadowski's vote in favor of his speculation about what Petitioner's observer "may have mistakenly recorded," what the Board agent "could have assembled" and what such theories "could explain" about Ms. Sadowski's ballot. (HOR 24) (Tr. 83-84, 86, 97-98, 101-03, 557-58, 599-600, 865) (Er. Exs. 10, 12-14) (Jt. Ex. 1).
59. The Hearing Officer erred as a matter of fact and law when he characterized Lifeway's objection that Board agents failed to identify themselves, leading at least one voter to believe that the Board agents worked for Petitioner, as one that Board agents were not wearing badges. (HOR 24-27) (Tr. 336-38, 354-56, 383-84, 424-26, 428, 451-52, 463, 466, 493-94, 725, 752-53).
60. The Hearing Officer erred as a matter of fact and law when he implicitly found that the Board's notices of election would advise voters as to the identity of Board agents conducting elections. (HOR 24-27).

61. The Hearing Officer erred as a matter of fact and law when he found that Board agents' failures to identify themselves, leading at least one voter to believe that the Board agents worked for Petitioner, did not raise reasonable doubt as to the fairness and validity of the election. (HOR 24-27) (Tr. 336-38, 354-56, 383-84, 424-26, 428, 451-52, 463, 466, 493-94, 725, 752-53).
62. The Hearing Officer erred as a matter of fact and law when he found the evidence insufficient to establish that Board agents failed to explain the challenge process to challenged voters, even while finding that a voter who observed challenges credibly testified that the challenge process that she observed was not explained. (HOR 24-28) (Tr. 350, 451).
63. The Hearing Officer erred as a matter of fact and law when he found that "[t]he facts do not show that any challenged voters were not explained the process when they were challenged" when the uncontroverted testimony by multiple witnesses was the opposite. (HOR 28) (Tr. 350, 451).
64. The Hearing Officer erred as a matter of fact when he found that Sara Hernandez testified that the challenge process was not explained to her, as opposed to Ms. Hernandez's testimony that the challenge process was not explained during the challenge process that she observed. (HOR 28) (Tr. 350, 451).
65. The Hearing Officer erred as a matter of fact and law when he found that Board agents at the Morton Grove polling location allowing groups of at least ten voters at a time into the polling area was not objectionable conduct. (HOR 28) (Tr. 75, 154-55, 157-58, 163-64, 166-68, 280-81, 332-34, 382, 418-21, 492-94, 495-99, 500-02, 509-10, 512-13, 519, 521-23, 612-13, 725-26, 729, 738, 846-47) (Jt. Ex. 4).



66. The Hearing Officer erred as a matter of fact and law when he based his decision on his suppositions about what “there is normally no reason” to do rather than what the evidence presented was actually done at the Morton Grove polling area. (HOR 28) (Tr. 75, 154-55, 157-58, 163-64, 166-68, 280-81, 332-34, 382, 418-21, 492-94, 495-99, 500-02, 509-10, 512-13, 519, 521-23, 612-13, 725-26, 729, 738, 846-47) (Er. Exs. 17-18) (Jt. Ex. 4).
67. The Hearing Officer erred as a matter of fact and law by implicitly finding, without any supporting evidence, that one of the three Board agents at the Morton Grove polling location would have neglected her primary duties to attend to keeping voters from entering the room. (HOR 28) (Tr. 75, 154-55, 157-58, 163-64, 166-68, 280-81, 332-34, 382, 418-21, 492-94, 495-99, 500-02, 509-10, 512-13, 519, 521-23, 612-13, 725-26, 729, 738, 846-47) (Er. Exs. 17-18) (Jt. Ex. 4).
68. The Hearing Officer erred as a matter of fact and law by implicitly finding, without any supporting evidence, that one of the three Board agents at the Morton Grove polling location was unable to keep voters from entering the room. (HOR 28) (Tr. 75, 154-55, 157-58, 163-64, 166-68, 280-81, 332-34, 382, 418-21, 492-94, 495-99, 500-02, 509-10, 512-13, 519, 521-23, 612-13, 725-26, 729, 738, 846-47) (Er. Exs. 17-18) (Jt. Ex. 4).
69. The Hearing Officer erred as a matter of fact and law by finding that allowing at least ten voters into the polling area simultaneously did not create confusion or a “pileup” within the polling area in contravention of Board election procedures. (HOR 28) (Tr. 75, 154-55, 157-58, 163-64, 166-68, 280-81, 332-34, 382, 418-21, 492-94, 495-99, 500-02, 509-10, 512-13, 519, 521-23, 612-13, 725-26, 729, 738, 846-47) (Er. Exs. 17-18) (Jt. Ex. 4).
70. The Hearing Officer erred as a matter of fact and law when he based his decision on his own speculation about what hypothetical voters “most likely” would see in other situations

and what those hypothetical voters might believe, rather than what the evidence showed actual voters saw and believed and what actually occurred in the polling area. (HOR 28) (Tr. 75, 154-55, 157-58, 163-64, 166-68, 280-81, 332-34, 382, 418-21, 492-94, 495-99, 500-02, 509-10, 512-13, 519, 521-23, 612-13, 725-26, 729, 738, 846-47) (Er. Exs. 17-18) (Jt. Ex. 4).

71. The Hearing Officer erred as a matter of fact and law when he found that the Morton Grove polling was conducted by just one Board agent, in contradiction to his other findings it was conducted “by three Board agents.” (HOR 28-29) (Tr. 75, 154-55, 157-58, 163-64, 166-68, 280-81, 332-34, 382, 418-21, 492-94, 495-99, 500-02, 509-10, 512-13, 519, 521-23, 612-13, 725-26, 729, 738, 846-47) (Er. Exs. 17-18) (Jt. Ex. 4).
72. The Hearing Officer erred as a matter of fact and law when he misconstrued Lifeway’s objection to Petitioner’s “red lists” of handwritten names that Petitioner’s observer wrote on, kept “in plain sight,” made markings and wrote names on that were observed by multiple voters, and returned to Petitioner with notations as to who voted as an allegation that Lifeway had a right to review Petitioner’s improper red lists. (HOR 28) (Tr. 96-97, 340, 342-44, 346-47, 385, 402, 429-32, 435-36, 438-40, 450-51, 497-99, 555-56, 562-67, 603-04, 738, 740) (Er. Exs. 17-18).
73. The Hearing Officer erred as a matter of fact and law when he found that a Board agent’s Spanish-language-only assistance to Petitioner’s observer in identifying and making challenges during both polling sessions at Morton Grove, particularly when Lifeway’s afternoon observer spoke only English, was not objectionable conduct. (HOR 28) (Tr. 343, 385, 450-51, 558-67, 603-04, 740, 854) (Er. Exs. 17-18) (Jt. Ex. 4).

74. The Hearing Officer erred as a matter of fact and law when he found that a Board agent's Spanish-language-only assistance to Petitioner's observer in identifying and making challenges during both polling sessions at Morton Grove, particularly when Lifeway's afternoon observer spoke only English, was not objectionable conduct because it may have only occurred in the afternoon and may not have occurred during the earlier, separate morning polling session. (HOR 28) (Tr. 343, 385, 450-51, 558-67, 603-04, 740, 854) (Er. Exs. 17-18) (Jt. Ex. 4).
75. The Hearing Officer erred as a matter of fact and law when he credited voter Edith Barraza's testimony that that a Board agent's Spanish-language-only assistance to Petitioner's observer in identifying and making challenges during the morning polling session at Morton Grove, but found that the Board agent's conduct was not objectionable conduct because Ms. Barraza observed it in the morning rather than the afternoon. (HOR 28-29) (Tr. 166-68, 332-34, 343, 382, 385, 418-19, 430-31, 450-51, 455, 501, 510, 558-67, 603-04, 740, 854) (Er. Exs. 17-18) (Jt. Ex. 4).
76. The Hearing Officer erred as a matter of law when he found that the Russian language interpreter's handling of multiple unused ballots was not objectionable conduct, even though he also found that "only Board agents are supposed to handle unused ballots and the ballots are to remain in their custody at all time (sic)." (HOR 29) (Tr. 425-26, 466) Jt. Ex. 4).
77. The Hearing Officer erred as a matter of law when he found that the Russian language interpreter's handling of multiple unused ballots at the Morton Grove polling location was not objectionable conduct because of a "momentary departure" exception to Board election

procedures that does not exist under existing Board precedent. (HOR 29) (Tr. 425-26, 466) Jt. Ex. 4).

78. The Hearing Officer erred as a matter of fact and law when he found that the Russian language interpreter's handling of multiple unused ballots at the Morton Grove polling location was a "momentary departure" despite the lack of any evidence that such departure was only "momentary." (HOR 29) (Tr. 425-26, 466) Jt. Ex. 4).
79. The Hearing Officer erred as a matter of law when he found that a Board agent's handling of marked ballots at the Morton Grove polling location was not objectionable conduct. (HOR 29) (Tr. 346-47, 435-36).
80. The Hearing Officer erred as a matter of fact and law when he found that Lifeway had not presented sufficient evidence to prove that Board agents at the Morton Grove polling location did not have challenged voters place their own ballots in the challenged ballot envelopes. (HOR 29) (Tr. 346-47, 435-36).
81. The Hearing Officer erred as a matter of fact and law when he required Lifeway to present evidence that a Board agent's handling of ballots at the Morton Grove polling location actually compromised the integrity of the election. (HOR 29) (Tr. 346-47, 435-36).
82. The Hearing Officer erred as a matter of law when he found that a Board agents' failure to prevent and stop the use of the "red lists" of handwritten names that were written on by Petitioner's observer "in plain sight" observed by multiple voters was not objectionable conduct under existing Board precedent. (HOR 14-15, 29-30) (Tr. 96-97, 340, 342-44, 346-47, 385, 402, 429-32, 435-36, 438-40, 450-51, 497-99, 555-56, 562-67, 603-04, 738, 740) (Er. Exs. 17-18).


83. As set forth in the above Exceptions, Lifeway excepts to the Hearing Officer's recommendation that Lifeway's Objections be overruled. (HOR at 30).
84. As set forth in the above Exceptions, Lifeway excepts to the Hearing Officer's recommendation that a Certification of Representative issue. (HOR at 30).

### **CONCLUSION**

The Hearing Officer's Report and Recommendations on Challenged Ballots and Objections to Conduct Affecting the Results of the Election, to the extent noted above, conflict with the evidence and Board precedent. Based on the above exceptions and as set forth in its accompanying Brief in Support of Exceptions, Employer Lifeway Foods, Inc. respectfully requests that the Board reject the Hearing Officer's Report and Recommendations and sustain Lifeway's Objections to Conduct Affecting the Results of the Election.

Respectfully submitted,

LIFEWAY FOODS, INC.

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Dated: December 5, 2014

**CERTIFICATE OF SERVICE**

The undersigned attorney certifies that on December 5, 2014, he caused a copy of the foregoing to be filed with the National Labor Relations Board by using the E-filing system on the Board's website and caused additional copies to be served as follows:

**VIA ELECTRONIC FILING AND U.S. MAIL (ONE COPY):**

Mr. Peter Sung Ohr  
Regional Director  
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A handwritten signature in black ink, appearing to read "Douglas A. Hass", written over a horizontal line.

Douglas A. Hass